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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 GABRIEL ALLEN ECKARD,

10 CASE NO. C19-104 RSM

11 Plaintiff,

12 v.
13 ORDER ADOPTING REPORT AND
14 RECOMMENDATION

15 PATRICIA THOMAS, et al.,

16 Defendants.

17 This matter is before the Court on United States Magistrate Judge Brian A. Tsuchida's
18 Report and Recommendation ("R&R") for the Court to grant Defendants' motion for summary
19 judgment. Dkt. #32. Plaintiff has filed objections, to which Defendants responded. Dkts. #41
20 and #42. Having reviewed the record de novo, the Court adopts the R&R.

21 Plaintiff, then held in a county jail, initiated this action based on interactions with jail
22 staff that culminated in Defendants' use of oleoresin capsicum vapor and a restraint chair on
23 Plaintiff. Dkt. #5. Plaintiff contended that these actions violated his Fourth and Fourteenth
24 Amendment rights. *Id.* at ¶ 20. Judge Tsuchida's R&R thoroughly explained why those claims
fail. Dkt. #32 at 11–16. Plaintiff objects and argues that the R&R is incorrect as to his chair
restraint claims. Because Plaintiff's objections now only focus on his placement in a restraint
chair, the Court primarily addresses that aspect of the R&R.

1 The R&R recounted Plaintiff's constitutional right, as a pretrial detainee, to be free from
2 punishment. This looks to "whether there was an express intent to punish, or 'whether an
3 alternative purpose which [the restriction] may rationally be connected is assignable for it, and
4 whether it appears excessive in relation to the alternative purposes assigned [to it].'" Dkt. #32 at
5 (citing *Demery v. Arpaio*, 378 F.3d 1020, 1028 (9th Cir. 2004) (citation omitted)) (alterations
6 in R&R). At bottom, the consideration is whether Defendants' actions were objectively
7 unreasonable. *Id.* (citing *Kingsley v. Hendrickson*, ____ U.S. ___, 135 S. Ct. 2466, 2475, 192
8 L.Ed. 2d 416 (2015)).

9 The R&R recounts much of the evidence, including evidence demonstrating that Plaintiff
10 was warned ahead of time that his continued pressing of the emergency call button in his cell was
11 interfering with operation of the jail and needed to stop. Dkt. #32 at 7–8 (citing Dkt. #17). When
12 Plaintiff continued to press the emergency button in his cell and interfere with jail operations,
13 Defendants found it necessary to place him in a restraint chair. *Id.* at 8 (citing Dkt. #17). Because
14 the restraint chair would make Plaintiff unable to push his emergency button in the event of a
15 true emergency, Defendants determined that it was necessary to place Plaintiff in the observation
16 unit of the jail. *Id.*

17 Judge Tsuchida's R&R then goes on to correctly consider the evidence in the light most
18 favorable to Plaintiff and concluded that Defendants established that Plaintiff's actions were
19 interfering with administration of the jail. Plaintiff's conclusory arguments to the contrary are
20 purely speculative. Properly considering the evidence before the Court and applying the relevant
21 law, the R&R concluded that Defendants' actions were objectively reasonable and did not
22 amount to unconstitutional punishment. *Id.* at 15–16 (considering *Kingsley* factors).

23 Plaintiff's objections primarily rehash his speculative factual arguments that were
24 appropriately rejected in the R&R. For instance, Plaintiff claims that Judge Tsuchida had no

1 basis to conclude that pressing the emergency call button would interfere with jail administration.
2 Dkt. #41 at 1–3. Similarly, Plaintiff argues that other more reasonable options were available to
3 Defendants in addressing his conduct. *Id.* at 3–4. Plaintiff maintains that the R&R failed to
4 consider this “evidence” and simply ignored his testimony because he is a prisoner. *Id.* at 3–5.
5 But the Court’s de novo review makes clear that Plaintiff’s “evidence” is overly speculative as
6 he does not establish any basis for his knowledge of jail operations. Conversely, Defendants
7 have presented declarations detailing the events and their actions. Dkts. #16 and #17. Plaintiff
8 may not rely on his own speculation. *See Nelson v. Pima Cnty. Coll.*, 83 F.3d 1075, 1081–82
9 (9th Cir. 1996) (“[M]ere allegation and speculation do not create a factual dispute for purposes
10 of summary judgment.”).

11 Lastly, Plaintiff again complains that he should be allowed additional time to conduct
12 discovery. Dkt. #41 at 5. But the R&R fully considered this issue. Most importantly, Judge
13 Tsuchida noted that the discovery deadline had long since passed and that Plaintiff had not
14 identified any potential evidence likely to alter the Court’s consideration. Dkt. #32 at 10.
15 Similarly, Defendants’ response to Plaintiff’s objections affirms that “[t]he discovery cutoff
16 passed without any discovery requests from Plaintiff and, to this date, Defendants have never
17 received discovery requests of any kind from Plaintiff in this matter.” Dkt. #43 at ¶ 2. The Court
18 finds it appropriate to deny Plaintiff’s request, as recommended by the R&R.

19 Accordingly, and having reviewed Defendants’ Motion for Summary Judgment, the
20 Report and Recommendation of United States Magistrate Judge Brian A. Tsuchida, the
21 objections and responses thereto, and the remaining record, the Court FINDS and ORDERS:

- 22 1. The Report and Recommendation (Dkt. #32) is ADOPTED.
23 2. Defendants’ Motion for Summary Judgment (Dkt. #22) is GRANTED and the complaint
24 is dismissed with prejudice.

3. This matter is CLOSED.

4. The Clerk of Court is directed to send copies of this Order to Plaintiff at his last known address and to Judge Tsuchida.

Dated this 9 day of March, 2020.

B. M. J.

RICARDO S. MARTINEZ
CHIEF UNITED STATES DISTRICT JUDGE